



POSTAL REGULATORY COMMISSION

39 CFR Part 3065

[Docket Nos. RM2020-4; Order No. 6047]

RIN 3211-AA26

Market Dominant Products

AGENCY: Postal Regulatory Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is proposing to add rules which describe instances when letters may be carried out of the mail, or when the letter monopoly does not apply to a mailpiece. The Commission invites public comment on the proposed rule.

DATES: *Comments are due:* [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: For additional information, Order No. 6047 can be accessed electronically through the Commission's website at <https://www.prc.gov>. Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

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I. Relevant Statutory Requirements

Section 601 of title 39 describes instances when letters may be carried out of the mail, or when the letter monopoly does not apply to a mailpiece. Section 601(a) sets forth the conditions under which a letter may be carried out of the mail, which include requiring that the letter be enclosed in an envelope, that the proper amount of postage is affixed to the envelope, and that the postage is canceled. 39 U.S.C. 601(a). Section 601(b) provides the price and weight limitations such that the letter monopoly does not apply to letters charged more than six times the current rate for the first ounce of a Single-Piece First-Class Letter or to letters weighing more than 12.5 ounces. 39 U.S.C. 601(b)(1) and (2). Section 601(b)(3) references exceptions from the Postal Service regulations that purported to permit private carriage as in effect on July 1, 2005. 39 U.S.C. 601(b)(3); *see also* 39 CFR § 310.1; 39 CFR §§ 320.2 through 320.8. Section 601(c) directs the Commission to promulgate any regulations necessary to carry out this section. 39 U.S.C. 601(c).

II. Background

The Postal Service has exclusive rights in the carriage and delivery of letters under certain circumstances.¹ This letter monopoly is codified in the Private Express Statutes (PES), a group of civil and criminal statutes that make it

¹ This exclusive right is known as the “letter monopoly.” The Commission has previously discussed the background and history of the letter monopoly. *See* Advance Notice of Proposed Rulemaking to Consider Regulations to Carry Out the Statutory Requirements of 39 U.S.C. 601, February 7, 2020 (Order No. 5422); 85 FR 8789 (Feb. 18, 2020).

unlawful for any entity other than the Postal Service to send or carry letters. See 18 U.S.C. 1693-1699; 39 U.S.C. 601-606.²

Under the Postal Accountability and Enhancement Act (PAEA) of 2006,³ Congress added Section 601(b)(3) to authorize the continuation of private activities that the Postal Service had purportedly permitted by regulations to be carried out of the mail.⁴ Congress gave the Commission the authority to promulgate any regulations necessary to carry out the section. 39 U.S.C. 601(c).

On February 7, 2020, the Commission issued Order No. 5422, seeking input from the public about what regulations promulgated by the Commission may be necessary to carry out the requirements of 39 U.S.C. 601. In particular, the Commission sought comments on 14 issues, such as whether the statutory requirements of Section 601 are clear and concise, whether any terms in the statute required further definition, and whether consumers and competitors can easily determine when a mailpiece is subject to monopoly protections. Order No. 5422 at 7-8.

The Commission received a wide range of comments in response to Order No. 5422, but found it necessary to gather more information before promulgating regulations under Section 601. Thus, the Commission held this docket in abeyance and initiated a public inquiry seeking further input from the public.⁵ In particular, the Commission sought comments on two issues: (1) whether Postal

² Although these provisions of the U.S. Code are customarily referred to collectively as the “PES,” they do not all relate to private expresses or prohibit carriage of letters out of the mails.

³ See Postal Accountability and Enhancement Act, Pub. L. 109-435, 120 Stat. 3198 (2006).

⁴ The House Report on the PAEA explains that the clause protects mailers and private carriers who had relied upon the regulations adopted as of the date of the bill. See H.R. Rep. No. 109-66, 109th Cong., 1st Sess., pt. 1, at 58 (2005) (H.R. Rep. No. 109-66), at 58.

⁵ See Order Holding Rulemaking in Abeyance, July 2, 2021 (Order No. 5929); Docket No. PI2021-2, Notice and Order Providing an Opportunity to Comment on Regulations Pertaining to 39 U.S.C. § 601, July 2, 2021 (Order No. 5930); 86 FR 36246 (Jul. 9, 2021).

Service regulations administering current Sections 601(a), 601(b)(1), and 601(b)(2) should be adopted by the Commission; and (2) what private carrier services are within the scope of Section 601(b)(3). For both issues, the goal of the Commission was to determine whether it is necessary to clarify the statutory exemptions regarding the letter monopoly. The Commission sought information as to how best to resolve any ambiguities in the application of the exceptions. The Commission also inquired whether consolidating regulations and definitions under one section, rescinding redundant and/or conflicting sections, or standardizing the terminology used in the regulations would be helpful.

Having received adequate input from the public in order to propose regulations in this docket, the Commission issued an order, filed concurrently with this order, closing the public inquiry docket.⁶

III. Basis and Purpose of Proposed Rule

The Commission finds it necessary to provide some clarity on the statute, and its relationship with the Postal Service's regulations. The Commission also finds it necessary to provide the public a process to seek clarification of the statute or the letter monopoly should the need arise in the future. Thus, the Commission proposes the following rules.

First, the Commission proposes a provision stating that certain Postal Service regulations in parts 310 and 320 of this title are within the scope of these new rules and subject to Commission interpretation. The Postal Service asserts that only certain provisions in parts 310 and 320 of this title are subject to Commission authority, namely § 310.1(a)(7) of this title, § 310.2(b)(1) and (2) of this title, and §§ 320.2 through 320.8 of this title. However, the Commission

⁶ See Docket No. PI2021-2, Order Closing Docket, November 24, 2021 (Order No. 6046).

notes that Section 601(b)(3) specifically references § 310.1 of this title in its entirety and thus, the entirety of that provision is under Commission authority. Additionally, the definitions referenced in § 310.1 of this title are referenced in § 320.1 of this title and therefore, the Commission also includes § 320.1 of this title. The Commission also proposes a provision that if there is a conflict between the Postal Service regulations and Section 601, Section 601 takes precedence.

Next, the Commission proposes a provision explicitly stating that the Postal Service no longer has authority to issue regulations interpreting, suspending or otherwise defining the scope of the letter monopoly. These provisions also include a prohibition on issuing guidance or entering into agreements purporting to do the same. The Commission also proposes a provision stating that it has the sole authority to promulgate regulations necessary to carry out Section 601.

Finally, the Commission proposes a provision allowing interested parties to seek interpretation of Postal Service regulations or statutory language by filing a rulemaking petition with the Commission, or requesting an advisory opinion from the Commission's General Counsel. The Commission may also initiate its own proceeding. These procedures allow for interpretation of statutory and regulatory requirements that is accessible and transparent to the public.

IV. Proposed Rule

The Commission proposes to place the new regulations clarifying Section 601 in new 39 CFR part 3065.

Proposed § 3050.1 states that the rules in this part implement 39 U.S.C. 601. It lists the Postal Service regulations that are subject to the proposed rules and clarifies that the Commission has authority to interpret them. It also provides

that in the event of a conflict between Section 601 and the Postal Service regulations, Section 601 would supersede any applicable requirements.

Proposed § 3065.2 provides that the Commission has the sole authority to promulgate new regulations necessary to carry out Section 601. It also prohibits the Postal Service from promulgating any new regulations, issuing any guidance, or entering into agreements purporting to suspend or otherwise define the letter monopoly. It further states that the Postal Service may not promulgate new regulations or issue any guidance purporting to interpret Section 601.

Proposed § 3065.3 provides two procedures for parties seeking clarification or interpretation of the statute or regulations concerning Section 601. It also states that the Commission may initiate its own proceeding for clarification or interpretation.

List of Subjects in 39 CFR Part 3065

Administrative practice and procedure, Postal Service.

For the reasons stated in the preamble, the Commission proposes to amend chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3065—RULES FOR LETTERS CARRIED OUT OF THE MAIL

1. Add part 3065 to read as follows:

PART 3065—RULES FOR LETTERS CARRIED OUT OF THE MAIL

Sec.

3065.1 Applicability and scope.

3065.2 Prohibition on new regulations.

3065.3 Procedure for seeking clarification or interpretation.

Authority: 39 U.S.C. 503, 601.

§ 3065.1 Applicability and scope.

(a) The rules in this part implement 39 U.S.C. 601, which generally describes when letters may be carried out of the mail.

(b) Notwithstanding placement in Postal Service chapter I of this title, the following provisions in parts 310 and 320 of this title are within the scope of this part and the Commission has the authority to interpret them:

(1) § 310.1 of this title;

(2) § 310.2(b)(1) and (2) of this title; and

(3) §§ 320.1 through 320.8 of this title.

(c) In the event of a conflict between 39 U.S.C. 601 and applicable regulations under parts 310 and 320 of this title, 39 U.S.C. 601 shall supersede any other generally applicable requirements.

§ 3065.2 Prohibition on new regulations.

(a) The Postal Service may not promulgate any new regulations, issue guidance, or enter into agreements purporting to suspend or otherwise define the scope of the letter monopoly.

(b) The Postal Service may not promulgate any new regulations or issue guidance purporting to interpret 39 U.S.C. 601.

(c) The Commission has the sole authority to promulgate new regulations necessary to carry out 39 U.S.C. 601.

§ 3065.3 Procedure for seeking clarification or interpretation.

(a) The Commission may, on its own motion, initiate a proceeding under this subpart pursuant to § 3010.201(a) of this chapter.

(b) The Commission may provide interpretation of these regulations or 39 U.S.C. 601 upon:

(1) a party's request to initiate a rulemaking proceeding with the Commission pursuant to the requirements of § 3010.201(b) of this chapter; or

(2) a party's request for an advisory opinion from the General Counsel.

By the Commission.

Erica A. Barker,

Secretary.

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